FILED
FEB 21 1994

No. 93-1029

In the Supreme Court of the United States

OCTOBER TERM, 1993

ELMER T. WILSON, SR., AND MAXINE WILSON,
PETITIONERS

v.

UNITED STATES DEPARTMENT OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

MARK B. STERN
SUSHMA SONI
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the government was entitled to summary judgment on petitioners' challenge to the denial of their application for disaster relief.

2. Whether the procedures employed by the Agricultural Stabilization and Conservation Service in ruling on petitioners' application for disaster relief deprived them of a protected property interest without due process of law.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	5
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Board of Regents v. *Roth*, 408 U.S. 564 (1972)	6
Department of Labor v. *Triplett*, 494 U.S. 715 (1990)	6
Goldberg v. *Kelly*, 397 U.S. 254 (1970)	6
Logan v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982)	7
Lyng v. *Payne*, 476 U.S. 926 (1986)	6
Mathews v. *Eldridge*, 424 U.S. 319 (1976)	7
Motor Vehicle Manufacturers Ass'n v. *State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983)	5-6
Rosas v. *United States Small Business Admin.*, 964 F.2d 351 (5th Cir. 1992)	5
Walters v. *National Ass'n of Radiation Survivors*, 473 U.S. 305 (1985)	6
Westcott v. *Department of Agriculture*, 611 F. Supp. 351 (D. Neb. 1984), aff'd, 765 F.2d 121 (8th Cir. 1985)	8

Constitution, statutes and regulations:

U.S. Const. Amend. V	6
Disaster Assistance Act of 1988, Pub. L. No. 100-387, 102 Stat. 924	2
15 U.S.C. 714b(c)	2
7 C.F.R. (1989):	
Sections 780.3-780.5	2
Section 1477.5(a)(3)(ii)	2

In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-1029

ELMER T. WILSON, SR., AND MAXINE WILSON,
PETITIONERS

v.

UNITED STATES DEPARTMENT OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is reported at 991 F.2d 1211. The opinion of the district court (Pet. App. 31a-33a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 27, 1993. A petition for rehearing was denied on July 29, 1993. Pet. App. 30a. The petition for a writ of certiorari was filed on October 26, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Disaster Assistance Act of 1988, Pub. L. No. 100-387, 102 Stat. 924, authorized the Secretary of Agriculture to make disaster payments available to farmers of designated commodities if certain disaster conditions reduced the farmers' 1988 crop yields below a level specified by the statute. Pursuant to implementing regulations, the Agricultural Stabilization and Conservation Service (ASCS), an agency of the Department of Agriculture, made disaster payments available to qualified farm operators who were "[u]nable to harvest at least 65 percent of the expected production." 7 C.F.R. 1477.5(a)(3)(ii) (1989). Initial eligibility determinations were made by ASCS county committees, with the right of appeal to the state committee and then to the Deputy Administrator. 7 C.F.R. 780.3-780.5 (1989). After exhausting those administrative remedies, an unsuccessful applicant could sue. 15 U.S.C. 714b(c).

Following the loss of their 1988 rice crop, petitioners sought indemnification from the Federal Crop Insurance Corporation (FCIC). The FCIC denied their claim. Pet. App. 3a-5a. At the same time, petitioners applied for a disaster payment from the ASCS. *Id.* at 6a. A meeting was held, at which the local ASCS committee consulted the county agent and reviewed the FCIC field reports. On the basis of that information, the committee denied petitioners' application on the ground that improper farming practices caused petitioners' crop loss. *Id.* at 41a-50a. Petitioners assert that they were not notified in advance of that meeting.

Petitioners were afforded the opportunity to offer reasons why the local ASCS committee should alter

its conclusion. At a subsequent meeting, petitioners testified regarding the adverse weather conditions that affected their 1988 rice crop. Other farmers brought to the meeting by petitioners testified concerning the reasonableness of petitioners' farming practices. Pet. App. 51a-58a.

The local ASCS committee held one further meeting, of which petitioners state that they had no advance notice. At that meeting, the committee heard further testimony from an FCIC agent and considered data from the Army Corps of Engineers, which contradicted petitioners' testimony concerning the weather conditions that allegedly caused the crop failure. The local ASCS committee then upheld its original decision to disapprove petitioners' application. Pet. App. 60a-67a. The committee concluded that despite petitioners' knowledge of proper rice farming practices, "in this particular case, * * * [petitioners] failed to carry out practices that are customarily performed to produce a crop." *Id.* at 67a.

2. After unsuccessfully appealing to the ASCS state committee, petitioners filed suit challenging the denial of their crop insurance claim and their disaster payment application. Pet. App. 5a, 8a. The government moved to dismiss petitioners' claims for lack of jurisdiction or, in the alternative, for summary judgment.

The district court initially denied the government's motion on the ground that "a genuine question of material fact [existed] as to what constitutes good rice farming practice in this case." Pet. App. 39a. However, upon the government's motion for reconsideration, the district court concluded that petitioners' failure to comply with a ten-day deadline for

filing a crop insurance claim "bars their recovery under the insurance policy." *Id.* at 32a. The district court then dismissed petitioners' claims in their entirety, *id.* at 31a-33a, stating that petitioners' counsel "ha[d] presented no jurisprudence to convince this court that the Government's motion * * * should not be granted." *Id.* at 33a.

3. Petitioners appealed the district court's final judgment to the Fifth Circuit. The court of appeals treated the district court's decision as an order granting summary judgment, on the ground that the court had relied on materials outside the complaint. With respect to the crop insurance claim against the FCIC, the court of appeals reversed and remanded, holding that "questions of material fact * * * make summary treatment of this matter inappropriate." Pet. App. 3a; see *id.* at 21a-28a.* But the court affirmed the district court's decision insofar as it granted summary judgment for the government on the ASCS claim. *Id.* at 13a-21a.

The court of appeals rejected petitioners' contention that the ASCS's denial of the disaster payment was arbitrary and capricious, explaining that the administrative record contained sufficient evidence to support the ASCS's conclusion "that improper farming practices, not an eligible disaster condition, were responsible for [petitioners'] crop losses." Pet. App. 15a.

The court of appeals also rejected petitioners' argument that the government violated their procedural due process rights by failing to notify petitioners of all ASCS meetings regarding their

* Petitioners' FCIC claim is not at issue in this Court.

application and by failing to permit petitioners to cross-examine those who provided information to the local ASCS committee at those meetings. Pet. App. 18a-21a. As a threshold matter, the court of appeals held that petitioners' interest in receiving a disaster payment did not constitute a property interest to which due process rights attached. *Id.* at 19a. Noting that petitioners had had the opportunity to present evidence to the ASCS committee, the court of appeals further concluded that in any event "[t]here is no[] deprivation of due process under the facts of this case." *Id.* at 20a-21a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore unwarranted.

1. Petitioners assert (Pet. 14-16) that summary judgment was inappropriate because the district court failed to give written reasons for rejecting their disaster payment claim.

A district court, however, is not required to render a detailed opinion explaining the reasons for its determination on every issue in a case. See generally *Rosas* v. *United States Small Business Admin.*, 964 F.2d 351, 358 (5th Cir. 1992). The court of appeals carefully reviewed the record and determined that the testimony of the county agent and of the FCIC agent, as well as the Extension Service materials reviewed by the ASCS committee, amply established that the ASCS's decision was not "so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Pet. App. 17a (quoting *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual*

Automobile Ins. Co., 463 U.S. 29, 43 (1983)). In light of the "arbitrary and capricious" standard that governs judicial review of the agency's determination, petitioners' contention (Pet. 16-20) that the court of appeals failed to review the record in the light most favorable to petitioners is without foundation. Accordingly, the court of appeals properly affirmed the grant of summary judgment to the ASCS.

2. Petitioners also contend (Pet. 21-36) that the procedures employed by the ASCS deprived them of a property interest without due process of law, in violation of the Fifth Amendment.

a. The court of appeals properly held (Pet. App. 18a-19a) that petitioners had no property interest in a government disaster relief payment. This Court's decision in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), relied upon by petitioners (Pet. 22-23, 30-32), is not to the contrary. Unlike the recipient of welfare benefits in *Goldberg*, who challenged the termination of those benefits, see 397 U.S. at 260, petitioners are challenging the determination that they were not entitled to benefits in the first place. This Court has never held that an "abstract need or desire," *Board of Regents* v. *Roth*, 408 U.S. 564, 577 (1972), for a benefit one has not yet been awarded is sufficient to constitute a "legitimate claim of entitlement," *ibid.*, that would be recognized as a constitutionally protected property interest. See *Lyng* v. *Payne*, 476 U.S. 926, 942 (1986); *Walters* v. *National Ass'n of Radiation Survivors*, 473 U.S. 305, 320 n.8 (1985); cf. *Department of Labor* v. *Triplett*, 494 U.S. 715, 721 (1990). Because petitioners have not been awarded benefits, they cannot demonstrate that they have been deprived of a property interest without due process of law.

Nor is petitioners' argument supported by this Court's decision in *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982). In that case, a discharged employee was deprived of a cause of action to remedy alleged discrimination, as a result of the failure by a state administrative agency to act on his timely filed claim within the period specified by statute. The Court held that the employee's cause of action, specifically created by state statute, was a constitutionally protected property interest. *Id.* at 428-433. Petitioners, however, were not deprived of a statutory cause of action; they received a full adjudication of their claim of entitlement to benefits. They therefore can derive no support from *Logan*.

b. In any event, petitioners received constitutionally adequate process on their disaster assistance claim. This Court has long recognized that "due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Mathews* v. *Eldridge*, 424 U.S. 319, 334 (1976) (internal quotation marks and brackets omitted). "All that is necessary is that the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are [about] to be heard * * * to insure that they are given a meaningful opportunity to present their case." *Id.* at 349 (internal quotation marks omitted).

Petitioners were afforded the opportunity to make their views known in an appropriate manner at each stage of the ASCS's determination process. They submitted written evidence to the local committee, appeared with counsel before the committee to submit additional testimony and evidence, and appeared again before the state ASCS committee to present their

case on appeal. In the circumstances of this case, that is all that was constitutionally required. See *Westcott* v. *Department of Agriculture*, 611 F. Supp. 351, 359 (D. Neb. 1984), aff'd, 765 F.2d 121 (8th Cir. 1985).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

MARK B. STERN
SUSHMA SONI
Attorneys

FEBRUARY 1994